

Regulation for (Qualified Itinerant Veteran Vendors) as Consumers of Goods, Wares or Merchandise (owned by the Veteran him/her). Contained in Business & Professions Code 16100, 16100.5, **16102**.

The statutory reference that supports the regulatory provision that is being suggested is contained in the March 12, 1872 and the March 24, 1893 enactment that recognizes that "every soldier, sailor or marine of the United States shall have the right to hawk, peddle and vend any goods, wares or merchandise that he/she owns.....without payment of any license, tax, or fee whatsoever, weather municipal, county or State. Business & Professions code 16102 has been upheld in California Supreme Court in "*Brooks vs. Santa Clara*", 1987 a Published case 191 CAL. APP. 3rd 750; 236 CAL Rptr. 509; 1987 CAL. App. However the State Board of Equalizations has failed to abide by the PLAIN MEANING of the enactment and this has resulted in an "*illegal taking*" from the Veteran. This proposed regulation, to include the Veteran as the consumer instead of the retailer, as stated in section (a) below, this would clarify SBOE's apparent confusion of the issue. Upon presentation of AB 3009 to the Assembly Revenue & Taxation Committee, on May 12, 2008 where SBOE employees were present; the Assembly committee chairman stated "why has this not been handled at the SBOE level?" The chairman also inquired of any published cases. The SBOE employees were mistaken by not providing the chairman with the proper answer of "*Brooks vs. County of Santa Clara, 1987*". This mirrors the exact position I have held for years; and is the reason for my request for this petition. I do not understand why the SBOE refuses to acknowledge that *Brooks vs. County of Santa Clara* was NOT overturned and that they continue to ignore a high court case that is on point, and the failure to bring this published case to the attention of the Revenue & Taxation Committee Chairman.

This petition is to request the following regulation as outlined below, be adopted by the SBOE for clarification of existing State Statute and that the SBOE follow the PLAIN MEANING of the existing enactment.

- (a) **GENERALLY.** Except as provided in subdivision (e), a qualified itinerant Veteran vendor is a consumer of, and shall not be considered a retailer of any goods, ware, or merchandise that he/she owns and offers for sale.
- (b) **DEFINITIONS.** For the purpose of selling any goods, wares or merchandise by itinerant means only. Itinerant Vendor Veteran
- (c) A qualified Itinerant Veteran vendor means a soldier, sailor, airman, or marine of the United States who has received an honorable discharge or a release from active duty under honorable conditions from such service.
- (d) "Permanent place of business" means any building or other permanently affixed structure that is used in whole or part for sales of goods, wares, and merchandise that the veteran owns.
- (e) This section shall not apply to the sale or use of spirituous, malt, vinous or any other intoxicating beverage.

REQUIRED DOCUMENTATION: When the Board determines it is necessary for efficient administration of the Sales and Use Tax Law, a qualified itinerant Veteran vendor shall be considered a consumer of any goods, wares, or merchandise that he/she owns, then sells when he/she has obtained a certificate from the Board. Documentation required for Veteran to obtain the certificate shall include proof of release from active duty under honorable conditions, or his/her honorable discharge from the United States military service, or a certified copy thereof.

- (1) **SWAP MEETS, FLEA MARKETS, OR SPECIAL EVENTS.** The operator of the event as provided in Revenue and Taxation Code 6073, is required to obtain written

evidence that each seller holds a valid seller's permit, the itinerant Veteran vendor is required to submit certification from the Board that he/she is tax exempt.

- (2) CATERING TRUCKS. When operating out of a facility pursuant to Health and Safety Code section 114295, the qualified itinerant Veteran vendor will provide a tax exemption certification from the Board to address as provided in Revenue and Taxation Code section 6074 regarding sales to catering truck operators.